

IN THE COURT OF COMMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANIA
CIVIL

4 DONNA SODERS, on behalf of
5 herself and all others
 similarly situated,

Plaintiffs

VS

No. 04255 of 2000

GENERAL MOTORS CORPORATION,

Defendant

COPY

TRANSCRIPT OF PROCEEDINGS
SETTLEMENT FAIRNESS HEARING

Before: THE HONORABLE LOUIS J. FARINA

Date : Tuesday, April 28, 2009

Place : Courtroom Number 10
Lancaster County Courthouse
50 North Duke Street
Lancaster, PA 17608-3480

APPEARANCES:

JOSEPH F. RODA, ESQUIRE
MICHELE BURKHOLDER, ESQUIRE
RODA & NAST, P.C.
801 Estelle Drive
Lancaster, PA 17601
For - the Plaintiffs

JEFFREY A. LIPPS, ESQUIRE
CARPENTER & LIPPS, LLP
280 North High Street 1300
Columbus, OH 43215
For - the Defendant

1

2 APPEARANCES CONTINUED:

3

4 CHRISTOPHER S. UNDERHILL, ESQUIRE
5 HARTMAN,UNDERHILL & BRUBAKER, LLP
6 221 East Chestnut Street
7 Lancaster, PA 17602
8 For - the Defendant

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ROBERT GIBSON, ESQUIRE
GIBSON LAW FIRM
319 West Front Street
Media, PA 19063
For - the Objectors

1

PROCEEDINGS

2

(8:58 a.m.)

3

THE COURT: Mr. Roda, you may proceed.

4

MR. RODA: Good morning, Your Honor. May it
please the Court.

6

Last summer at a conference that Your Honor
convened, one of the many in this case, Your Honor
recommended the parties attend mediation and settlement.
The parties took that cue, and on October 15 went to
Philadelphia for mediation before a highly-regarded
professional mediator, Mr. Bennett Picker.

12

We, Plaintiffs' counsel, went to that, recognizing
the fiduciary obligation we had to the class to get the
best result we could through trial or settlement, under the
facts and the law.

16

This case had risk, as any case does, but this
case had more risk because it was a case of first
impression, and, thus, presented issues that had to be
decided for the first time. This was the first consumer
case under the Pennsylvania Board of Vehicles Act. There
had been four dealer cases brought under that act or
comparable acts in other states, but this was the first
brought by consumers. And it presented issues, even for a
single case, such as standing, statute of limitations, and
proof of damage.

1 It then presented additional issues because this
2 was not an individual case, this was a class case, and the
3 class issues, especially on proof of damages, compounded
4 the issues that otherwise would have been before the Court.

5 In addition, and most importantly, by the time we
6 went to settlement negotiations in October, there was an
7 issue that one ordinarily does not face, it was the specter
8 of GM's bankruptcy -- potentially imminent bankruptcy. By
9 that time, mid-October, the economy, of course, was
10 crashing. But, also, there were daily reports that GM,
11 without an infusion of billions from the government, might
12 not make it to the end of the year, much less substantially
13 into the next.

14 Under those circumstances, we believed that if
15 there was a reasonable settlement attainable, we owed it to
16 the class to pursue that. We had no judgment, no
17 collectible judgment against GM. We would first have to
18 win a trial to get that. We had no trial date. At that
19 point we did have a final pre-trial conference, scheduled
20 it with Your Honor for December 30, at which time we would
21 have gotten a trial date, which in all likelihood would
22 have been sometime within the first half of this year.

23 If we had won that trial, we would have faced, for
24 certain, an appeal of right to the Superior Court, which
25 would have delayed the entry of a final judgment, if we had

1 won that appeal, by at least another year. And, in all
2 likelihood, following the pattern that happened in this
3 case, there would have been an attempt by GM for an appeal
4 to the State Supreme Court, which could not be discounted
5 given the novel issues of the case and the potential
6 magnitude of the damages that the case involved. At a
7 minimum, even if the Supreme Court had denied allocatur, we
8 would have delayed another six months.

9 we, thus, knew if we did not settle, we would have
10 no final judgment for years. And, under the circumstances,
11 with every indication we had, we did not see how we had the
12 luxury of presuming that amount of time, or anything close
13 to it. We thought we were working under a clock that was
14 ticking in terms of weeks or months, at most. If GM filed
15 for bankruptcy and we had no judgment, the case would be
16 over, the class would receive nothing.

17 That changed everything; it changed our leverage.
18 Frankly, it took a great deal of our leverage away. It
19 mandated the best settlement we thought we could obtain.
20 We wanted -- let's be clear about this to the two class
21 members, or the representatives that are here -- we wanted
22 a cash settlement. We went into this case with the idea of
23 a cash recovery.

24 But a cash settlement was not an option. GM made
25 that very clear at the start of the negotiations. The

1 mediator, in private sessions with us, emphasized this was
2 not posture. If we insisted on cash settlement, the
3 mediation was over, there would be no settlement.

4 We wanted -- when the discussion turned to
5 certificates, we wanted a certificate that could be used
6 not only for the purchase of a car, but, also, for
7 maintenance, repair, or parts. That also, unfortunately,
8 was not a negotiable item.

9 And I have cleared with GM's counsel the ability
10 to say this, notwithstanding the cloak of privilege that
11 was over the settlement negotiations. We wanted to be
12 clear to the class and to the public how the settlement
13 that we did agree to was arrived at.

14 The only settlement that GM would agree to was
15 this certificate settlement that has been presented to the
16 Court. We, under the circumstances, all things considered,
17 we did not think we could responsibly walk away from that,
18 given the imminent specter of bankruptcy that had every
19 indication of being a reality, a very near reality,
20 something we, as class counsel, could not ignore. That is
21 the first reason we agreed to the certificate settlement.

22 The second was that we knew even if we could have
23 gotten a cash settlement from GM, which they said they
24 wouldn't, that would have had little, if any, practical
25 value to class members in the event of a bankruptcy. It

1 would not -- it would have just been another unsecured debt
2 that GM owed, it would have had no enhancement value to GM
3 in terms of reorganization going forward. It just would
4 have been a drain on its resources.

5 By contrast, the certificate settlement,
6 certificate for the purchase of cars, we believed had the
7 chance, even in the event of bankruptcy, of surviving,
8 because it would serve the interests of GM's
9 reorganization. It would serve the interest of GM's going
10 forward.

11 Reason three that we agreed to this settlement we
12 did, the certificate settlement had a value well within the
13 dollar value that a trial could have won for class members.
14 If the case had gone to trial based on the evidence we
15 have, the class members' recoveries would have ranged
16 between \$150 and \$200 per purchase.

17 But the class -- that would have been the gross,
18 but the class members would not have received a gross, had
19 we obtained that through a trial and the collection of that
20 fund. The class members would have had responsibility for
21 deduction for a proportionate share of costs and fees,
22 which, in the event of a trial, would normally have been
23 between 25 percent and one-third of the amount recovered.

24 The net, therefore, to class members, in the event
25 of a trial, a successful trial, successful appeal, would

1 have ranged at the one-third level, between \$100 and about
2 \$160 per vehicle, the net.

3 By contrast, the certificates had a value of \$200
4 net. Any fees and costs were to be borne by GM over and
5 above the value of the certificate. The certificates also
6 had a cash value. They could be transferred for full value
7 to a member of one's household. Not just a blood relative,
8 but a member of a household. After a year they could be
9 transferred to anyone for 75 percent of the value. That --
10 or \$150.

11 That compares favorably, again, with the net
12 amount, the best-case recovery potential for the class.
13 Many of the class members would have been below the best-
14 case \$250 recovery. They would have been at the lower end
15 of it. The certificates could also be stacked by those who
16 get them in the first instance with another certificate,
17 and the certificates for everyone, including transferees,
18 can be stacked with other GM discount programs with several
19 exceptions, one being an employee discount program, unless,
20 as the industry has been doing of late, that is extended to
21 the public generally.

22 The certificates also came -- this can't be
23 emphasized too much -- without the risk of a trial. The
24 certificates were a guaranteed thing as part of a
25 guaranteed settlement. In addition, there was the

1 practical problem of going to trial against GM in the
2 climate we would have gone to trial against them in.

3 It would have been impossible to get a jury not
4 aware of GM's dire financial condition. It would have been
5 impossible, I think, notwithstanding every intonation of
6 every admonition Your Honor gave nightly to a jury if they
7 weren't sequestered, for them not to be exposed when they
8 went home to more news about GM's dire condition.

9 And it would be folly, I think, for one in our
10 position to assume that would have done anything but hurt
11 our case in front of a jury in a case of this type, a
12 strictly economic injury case, not a quadriplegic or burn
13 victim, personal injury, something which has emotional
14 appeal value. That only compounded the risk we thought we
15 faced under the circumstances that had arisen through no
16 fault of our own.

17 For all of these reasons, the settlement we
18 reached, we believe, with its actual value, both in the use
19 of the certificates and their redeemable cash value, was a
20 reasonable decision under the time, under the
21 circumstances.

22 It was not the ideal, of course, but we did not
23 have the ideal situation. That has to be emphasized. The
24 settlement had a potential value to the class, potential
25 under this Court, if one multiplied the number -- the

1 certificate value by the number of vehicles we were told
2 was in the class, between 700,000 and 800,000, that
3 settlement had a potential value class-wide of between \$140
4 and \$160 million. Even at a 10 percent redemption rate, we
5 would have been talking about \$14 million to \$16 million of
6 value. Five percent, you do the math, seven to eight.

7 It is wrong, we suggest, notwithstanding the
8 popular conception, to regard all certificate settlements
9 without more, as, per say, suspect, questionable, bad,
10 whatever you want to call it.

11 Certificate settlements are not all, quote, the
12 same, any more than a cash settlement. All cash
13 settlements are not the same. They have to be looked at on
14 their facts and under their circumstances.

15 GM's imminent bankruptcy in our case distinguished
16 our case from every case that has disallowed or disapproved
17 of a certificate settlement. That includes the GM pick-up
18 case that is cited in our papers and in Mr. Gibson's papers
19 on behalf of his client objectors.

20 In none of those cases, unlike our case, was the
21 Defendant on the verge of bankruptcy. By contrast, in
22 those cases where financial solvency or viability was an
23 issue, the Courts have approved a certificate settlement
24 mentioning that factor. We mentioned two of the cases in
25 our briefs: The Ohio Public Interest Campaign, cited at

1 Pages 21 and 25 of our brief, and the Milkman Two case,
2 cited at Page 25 of our brief.

3 In both of those cases, the Courts mentioned the
4 questionable viability, questionable ability to pay the
5 cash settlement as a reason for approving the certificate
6 settlement proposed in that case.

7 There is another case, the In Re: Domestic
8 Airlines case, where the Court, in a combination cash and
9 certificate settlement, predominantly certificate,
10 mentioned the same thing as one of its considerations for
11 finding the settlement reasonable.

12 Now, the question of costs. We have filed our
13 petition for costs with Your Honor; there has been no
14 objection to our seeking of the costs. It was
15 approximately \$437,000 that we have laid out over the nine
16 years of this case, to keep the case alive, to provide the
17 class notice in the first instance after Your Honor granted
18 certification, at a cost of approximately \$200,000, to
19 retain the multiple experts that were necessary, either on
20 our initiative that we thought were in response to the
21 multiple experts GM retained, to depose those experts and
22 others, to defend depositions all over the state that GM
23 took, et cetera. They are documented, we have the receipts
24 in the back of them. I don't think there is a question
25 about those.

1 On our fees, we ask for the payment of a
2 reasonable fee for the work done that has led to this
3 settlement. As we have detailed in our petition, our
4 office, over the nine years of this case, which I think
5 probably sets a record for duration, have invested more
6 than 6,000 hours. That time was spent, which I know sounds
7 considerable, but Your Honor has lived with this case as we
8 have. I have these pages of our computer printout fee
9 records, lest there be any question about how the time was
10 spent.

11 That time was invested in obtaining class
12 certification, which was very hard fought, which was
13 appealed, not only to the Superior Court, but to the
14 Supreme Court, fighting the attempt to decertify the class
15 last year, which was, again, hard fought, keeping the case
16 alive against the repeated efforts at summary judgment, two
17 of them by GM, which had to be taken seriously, briefed
18 seriously, reviewing and analyzing the tens of thousands of
19 documents this case involved, a review and analysis that
20 took place not only here, at our offices, but also in Ohio
21 at GM's counsel's office where the documents were made
22 available to us, traveling all over the state, as I
23 mentioned, to defend or take the depositions GM sought, and
24 receive permission from the Court to take from a selected
25 group of absent class members.

1 We could not have gotten the settlement that is
2 here before the Court today without the investment of this
3 time. It was necessary to our ability to be where we are
4 today.

5 Fees and class actions are approached through
6 courts by either of two methods, which we mentioned, one,
7 percentage of the fund; second, the loan star approach.

8 In certificate settlements, the Courts have
9 differed on whether or how to use the percentage
10 appropriately. Some regard to use it based on the
11 potential value; others look at redemption rates,
12 et cetera. I mentioned before that if we were to value the
13 settlement at only five to ten percent of the potential
14 value, it would be at five percent of the seven to eight
15 million dollar value in the case.

16 GM has agreed, based on what our current loan star
17 was at the time in October, as it is customarily
18 determined, to pay up to \$1.86 million in fees. We do not
19 request that. We have not requested interest, we have not
20 requested a multiplier, we are not requesting the fee at
21 our current rates. We are requesting -- in our petition we
22 requested the fee only at our historic rates, the rates
23 that were in place and being billed in class actions at the
24 time in these nine years.

25 That is \$200,000 less than what GM has agreed to

1 pay in the case. But, Your Honor, and I say this without
2 having discussed this with GM or with anyone else, we have
3 made a further decision at our office on this, the powers
4 that be, so to speak, at the office.

5 We watch the same news everybody else watches. We
6 read the same papers everybody else watches. We are aware,
7 as everyone is, of this very unfortunate perfect storm that
8 has hit the economy, and GM in particular. You know, you
9 can't but help but feel bad for people who are losing their
10 jobs, who are having their pay cut, et cetera, because of
11 that.

12 In view of that, notwithstanding the work that
13 went into this case, the work that brings us here today, we
14 have come to the Court and say we are asking for a fee that
15 is half our historic rates. We have decided to cut our fee
16 request by the factor of half from the one point six. We
17 are asking for half of that, which is about \$843,000, with
18 our costs.

19 We believe the other request would have been
20 reasonable, but, under the circumstances, in an effort to
21 be eminently reasonable, we have decided to make that
22 request --

23 THE COURT: What does that result in your historic
24 rate being?

25 MR. RODA: It would be -- it would be a blended

1 rate of \$134 an hour.

2 Your Honor, I believe that I have covered the
3 objections that have been made. There have been, as we
4 mentioned in our papers, only nine objections filed. Seven
5 timely, two untimely, but we have considered all of those.

6 The objections have a common theme, cash, as
7 opposed to the certificates. As I have explained, cash
8 would have been our preference. This should -- our
9 position should not be understood as having gone and sought
10 a certificate settlement, or loosely agreeing to a
11 certificate settlement.

12 Our position was we wanted a cash settlement. We
13 could not get a cash settlement. Had we held out for cash
14 settlement, there would be no settlement, and, in all
15 likelihood, the class would receive nothing.

16 One can criticize the value of the certificates,
17 but they do have a value. They have a real value. And,
18 again, one has to look at their value, not in the abstract,
19 as if at trial we could have gotten something many
20 multiples of that value, but in relation to what a class
21 member could have hoped to obtain.

22 THE COURT: When the certificates become
23 transferable to anyone after a year to anyone --

24 MR. RODA: Yes.

25 THE COURT: -- is there a market?

1 MR. RODA: It will depend, Your Honor.

2 Fortunately, we are in the internet-age. We are
3 in the age where it is probably -- there is unprecedented
4 ease in establishing markets of any kind for people.

5 THE COURT: Because you could put them on Ebay for
6 that matter.

7 MR. RODA: They can be -- well, as I say, the
8 initial person may stack two of them to purchase. They may
9 -- everybody may stack them on top of any other discount
10 program which is attainable at the time. And even \$150 is
11 nothing to sneeze at if you are going in to buy a car.

12 If the dealer were on his own initiative to come
13 out and say I am going to cut it another \$150 for you,
14 people would be pleased about that.

15 But, again, in relation to what the class members
16 could have achieved, if we had won a trial and sustained
17 this through appeal and GM were not bankrupt by the time it
18 came to collect on that judgment, it is a good value. It
19 is a good value.

20 It is a compromise to be sure. But that is the
21 definition of a settlement.

22 THE COURT: Was Mr. Lipps aware of your
23 reduction --

24 MR. RODA: No, he was not. We have not asked --
25 we have not asked that.

1 We did discuss -- I raised, for the first time
2 with Mr. Lipps over the weekend, the idea, perhaps, of
3 extending the time for the class period. It runs until
4 June 15. There is still the better part of two months for
5 this.

6 But, of course, GM has had other things to deal
7 with in the past hours, the past days, literally. The
8 convergence of events just from the time we filed our fee
9 petition last week until today just magnifies the things to
10 which we refer.

11 THE COURT: It struck me yesterday as I watched
12 the news.

13 MR. RODA: It is really unfortunate. One only
14 hopes, as I said to counsel at GM when we concluded the
15 settlement negotiations, independent, not lawyer-to-lawyer,
16 but just person-to-person, we got to wish the best for all
17 these folks. These are real lives, et cetera.

18 THE COURT: I don't mean it struck for the first
19 time. But it struck me as particularly poignant yesterday
20 as the current announcements were being made as to the
21 plant closings, the loss of the Pontiac brand, some 21,000
22 jobs being cut, realizing we were coming here today to
23 consider this.

24 MR. RODA: And I learned here today just coming
25 down that those people who keep their jobs are all having

1 some very significant pay cuts to go along with it, too.

2 So you can't stand here and not take cognizance of
3 that, and we are trying to do that.

4 THE COURT: According to what I've read, it is not
5 a done deal. If the bondholders don't agree, it is
6 bankruptcy. At least that's what the news reports. But I
7 am sure Mr. Lipps can fill us in about that.

8 MR. RODA: Right.

9 And the agreement has been that there will be --
10 as per the terms of the settlement agreement, GM is going
11 to transfer the funds to Mr. Lipps to be held in his IOLTA
12 account pending the clocking of the days from the time,
13 whenever that is, that Your Honor would enter an order on
14 this.

15 I would be happy to answer questions, Your Honor,
16 or respond to anything that is said either by Mr. Lipps or
17 by the one class member who is here, or Mr. Gibson who is
18 representing two class members.

19 THE COURT: Mr. Lipps.

20 MR. LIPPS: I don't really have much to say, Your
21 Honor, and I would likewise answer any questions.

22 I will say I've represented GM for 28, 29 years
23 now, and this is perhaps the most difficult phase they have
24 gone through, and they are continuing to fight day and
25 night.

1 So it certainly puts a color on what is going on
2 here. I am in a little awkward spot because I don't want
3 to disclose any nonpublic information, so I am not going to
4 talk about where they are at right now, other than, as Your
5 Honor noted, it is a convergence of events right now with
6 respect to whether or not the bondholders will agree, there
7 is union, and, of course, the government. So there are any
8 number of things that are going on that will impact where
9 GM's at right now.

10 This -- I do agree with Joe that this was a case
11 not only of first impression, but one that was very hardly
12 litigated. And I want the Court to remember, from GM's
13 perspective there were some very serious legal issues that
14 even a trial wouldn't resolve, that ultimately would be
15 heard perhaps not -- they weren't willing to take it on the
16 interlocutory basis but were confident --

17 THE COURT: They definitely would have been
18 considered on direct appeal.

19 MR. LIPPS: And the other thing is we did try one
20 of these cases, and we were essentially, back when we tried
21 it, it was a dealer case. But when we tried it, we were
22 facing a class without a class because of collateral
23 estoppel.

24 So I would say this was one that was right at the
25 core of General Motors, in terms of its principle wanting

1 to defend this. The other thing I would say, we did come
2 in with some very serious constraints and took Your Honor's
3 suggestion and went to mediation.

4 Fortunately, Joe and I were able to agree on a
5 mediator who had, in my estimation, a dazzling array of
6 talents to be able to take those boundaries and work with
7 what Joe needed to be able to deliver a real benefit to the
8 class. And he accomplished something that none of us, at
9 least on my side, ever expected to have accomplished when
10 we walked into that room.

11 And I do agree that this is a real value to the
12 class. I think it is a fair, reasonable, and adequate
13 settlement, given the risks that were apparent in the case,
14 not only on the legal issues we've raised, but, also, the
15 injury issue. There are other aspects of it, which
16 included the dealer case settlement, which Your Honor had
17 not really had to deal with, but how that impacted what the
18 class really had, damages, together with the way the
19 program was structured. There was some money that would go
20 directly back to the dealer.

21 So there were a whole array of issues that would
22 have made this a case that no one could be assured there
23 would be at the end of the day, even with a verdict, much
24 of a recovery for the class members on an individual basis.
25 And I think this settlement gives them value.

1 And as Your Honor noted in questioning about the
2 market, we really are in an internet age, and, of course,
3 the elephant in the room is the dealers. The dealers, of
4 course, know about it, and they could certainly ask their
5 customers or others whether or not they have taken
6 advantage of a certificate or whatever.

7 So there is a source of information that's out
8 there, that is ready, and the dealers have an interest in
9 making the deals. So I do think it is a real value to the
10 class, and we would urge the Court approve it.

11 THE COURT: All right. Thank you.

12 I'll now hear from any objectors or class members,
13 either for or against.

14 Good morning.

15 MS. SPRADLIN: Good morning. I'm Debora Spradlin.

16 All I hear is numbers being thrown around. GM is
17 still in business, they still --

18 THE COURT: I'm sorry, did you get the name?

19 THE COURT REPORTER: I got the first name.

20 MS. SPRADLIN: Linda Spradlin.

21 THE COURT REPORTER: Could you spell that?

22 MS. SPRADLIN: S-P-R-A-D-L-I-N.

23 THE COURT REPORTER: Thank you.

24 THE COURT: Did you -- did you file a written
25 objection as well?

1 MS. SPRADLIN: Yes, I did.

2 MR. RODA: Your Honor, for the record, it is
3 No. 13.

4 THE COURT: Yes, okay.

5 MS. SPRADLIN: If it was illegal for them to take
6 the money, then I would like my money back. Giving me a
7 certificate to buy one of their cars is not doing me any
8 good. I still have the car.

9 Why should I get a certificate in return to buy a
10 car from them when they already done something wrong they
11 shouldn't have done? Two wrongs don't make right in my
12 book. I had to pay extra cash for it, I want my cash back.
13 I don't think it is fair I get some kind of certificate
14 that I can get some kind of cash value sometime, but it is
15 not doing me any good now.

16 THE COURT: All right.

17 MS. SPRADLIN: I can give them a certificate to
18 buy a car --

19 THE COURT: Does counsel care to respond?

20 MR. RODA: I don't wish to belabor the point. I
21 understand completely.

22 As I told Miss Spradlin in the hallway when I met
23 her this morning, I wish we could have gotten a cash
24 settlement. We could not get a cash settlement for you.
25 And if we had not gotten this settlement for you in the

1 class, in all likelihood there would have been nothing
2 achieved. It was a matter of the possible, not the ideal.

3 THE COURT: All right. Thank you, Miss Spradlin.

4 MS. SPRADLIN: Thank you.

5 THE COURT: Anyone else?

6 MR. GIBSON: Yes, Your Honor.

7 THE COURT: Are you Mr. Gibson?

8 MR. GIBSON: Yes, I am Bob Gibson. Nice to meet
9 you.

10 THE COURT: I have seen your objections.

11 MR. GIBSON: Okay.

12 THE COURT: That's the reason I know the name.

13 MR. GIBSON: Judge, I am not going to belabor the
14 Court with going through -- if you've already read my
15 written objections, but there are a few points that Mr.
16 Roda raised in his argument that support of the settlement
17 and in support of his fees that I'd like to address.

18 There is no question, Judge, that GM is suffering.
19 But there is also no question that consumers -- all
20 consumers in Pennsylvania are suffering as well. And there
21 has been, and Mr. Roda argued, that the reason for this
22 coupon settlement was, I believe, what he called the
23 imminent specter of bankruptcy by GM last October. And
24 listening to the news driving to the courthouse this
25 morning, all indications are that GM is not going to file

1 for bankruptcy. And I think the Court can take judicial
2 notice of that.

3 THE COURT: Frankly, that is -- I don't think
4 that's at all clear. what I recall reading is that if the
5 government, the union, and the bondholders don't agree,
6 bankruptcy is the next step.

7 And that from the article I read, the real problem
8 is that the bondholders feel the union is getting treated
9 too much better than they, because their stake would only
10 be something like 11 percent of the company, versus the
11 union getting 39 percent and the government getting 50
12 percent.

13 So my sense of the article is this bankruptcy
14 could occur if the bondholders -- and the report I read was
15 the bondholders are not favoring their deal. And if they
16 don't go along, what's next? That's my -- so in terms of
17 your request I take judicial notice, that's how I respond.

18 MR. GIBSON: Fair enough, Judge.

19 Let me focus on deficiencies of the settlement,
20 which the settlement calls for coupons to individuals that
21 purchased GM vehicles, as the Court is aware. And the
22 coupons have a value of \$200, \$100, or nothing, depending
23 on the documentation that the purchaser of the vehicle has.

24 In order to reap the benefit of this \$200 coupon,
25 consumers in this difficult economy, who also are facing

1 bankruptcies, are required to make a purchase of \$20,000 or
2 \$30,000 in order to get their \$200 benefit for what they
3 overpaid for a vehicle before. And in this economy, that
4 is an atrocious settlement.

5 And one of the factors is, and Mr. Roda continued
6 to argue that there was -- that he went to GM, talked to
7 GM, and said this is the best I can do. This is a case, as
8 class counsel said, already was certified, was appealed,
9 the certification was held up on appeal, they tried to get
10 it decertified, it couldn't be decertified.

11 Class counsel had tremendous leverage with GM to
12 negotiate some kind of settlement, even in the form of this
13 \$200 that could be used for services for a vehicle or parts
14 or repair for a vehicle, for Pennsylvania consumers who are
15 also facing bankruptcy.

16 Instead, these same consumers who are going
17 through bankruptcy right now, not just facing imminent
18 specter of bankruptcy, but are going through actual
19 bankruptcies right now, are required to purchase a vehicle
20 between \$20,000 and \$30,000 in order to get a \$200 or \$100
21 benefit from GM.

22 And, Your Honor, it doesn't take much to see this
23 is a completely inadequate settlement. And not only does
24 it not take much common sense, but, Your Honor, there was a
25 similar case, the GM pick-up case back in 1995, in which

1 Mr. Roda's wife was class counsel, that had similar
2 problems. And I believe what they called it was a
3 marketing -- tremendous sales bonanza for GM. And that's
4 exactly what is going on here, Judge.

5 I am not going to belabor the other defects --

6 THE COURT: Was that the case that was settled
7 within four months of being filed?

8 MR. GIBSON: Your Honor, I don't know the
9 disposition. Perhaps --

10 THE COURT: I believe that's what your memo or
11 response would indicate. This is a little different than
12 that.

13 MR. GIBSON: Every case has its different nuances.

14 THE COURT: Well, nine years versus four months of
15 hard-fought litigation, with multiple, substantial issues
16 that are still much alive for purposes of appeal is totally
17 different than a four-month period between the filing of
18 suit and settlement.

19 MR. GIBSON: I would agree.

20 THE COURT: The criticisms of that GM
21 settlement --

22 MR. GIBSON: I would agree with that.

23 THE COURT: -- are entirely not valid.

24 MR. GIBSON: I would agree with that, Your Honor,
25 but for the fact in that case -- and I do a fair amount of

1 class work -- and I am not as familiar with the case as
2 class counsel.

3 Was that case certified?

4 MR. RODA: Yes, there was a class certified.

5 MR. GIBSON: As part of the settlement, though?

6 MR. RODA: Right.

7 MR. GIBSON: This was a case that, Your Honor,
8 that case was settled -- they had a bigger risk in
9 litigation in that GM case. They hadn't even been
10 certified yet.

11 In this case, Judge, they actually have been
12 certified, it's been up on appeal, and they lost. Once
13 again, the risk of litigation in this case for class
14 counsel is low as compared to the other GM case. So I
15 think that even warrants more so a better settlement for
16 members of the class.

17 The other -- and I'd like to incorporate all the
18 objections I made in my written objection.

19 THE COURT: You may.

20 MR. GIBSON: The one-time transfer restriction,
21 that there is no guaranteed cash value, are also components
22 of the settlement that are just completely inadequate. And
23 it is not surprising the National Association of Consumer
24 Advocates, and it is telling when they warned that coupon
25 settlements such as this should be avoided. They

1 specifically state, quote, this situation is at its most
2 aggravated when a certificate requires a purchase of a new
3 car or other, quote on quote, big ticket items.

4 Now, with respect to class counsel's fees, and,
5 Your Honor, I received just at my request a copy of
6 Plaintiffs' memo in support of the motion for final
7 approval and for reimbursement of fees, which evidently was
8 filed on April 23. I am not on the certificate of service,
9 I never got a copy, so I haven't had a chance to review it
10 at length, and respectfully request a reasonable amount of
11 time to respond if there is anything I need to respond to
12 in here from the Court.

13 Class counsel mentioned that he is reducing his
14 attorneys' fees. I know the initial attorneys' fee
15 requested was roughly \$1.8 million and they have now
16 reduced that.

17 THE COURT: First reduced it to one-six, and now
18 eight-four.

19 MR. GIBSON: It is clear to me that class counsel
20 is involved in a case that has dragged on for nine years
21 and is trying to cut his losses, which is understandable.
22 But that doesn't excuse their responsibility to members of
23 the class not to agree to a settlement that is just
24 completely inadequate, provides no benefit to any members
25 of the class, unless they purchase -- a minuscule benefit,

1 only if they purchase, in this horrible economy, if
2 consumers purchase a \$20,000 or \$30,000 big-ticket item can
3 they get their \$100 or \$200.

4 And I think the fact that GM is facing bankruptcy,
5 which, again, I haven't seen any indication they are going
6 the bankruptcy route as of the news today, it just -- it
7 smacks of a conflict of interest that class counsel is
8 recouping their costs and that the consumers are getting
9 nothing.

10 And, like I mentioned, Judge, I would request a
11 reasonable period of time to respond to the motion for
12 final approval and fees.

13 And I know that class counsel mentioned, and he
14 held up a stack of documents, that they spent approximately
15 6,000 hours on the case and they are now reducing their
16 fee. I would request that be marked into evidence so those
17 time sheets could be reviewed.

18 THE COURT: All right. Counsel, do you have
19 any --

20 MR. RODA: Yes, Your Honor.

21 THE COURT: -- response?

22 MR. RODA: A couple points.

23 Even if one could stand here today and say there
24 is no indication that GM faces bankruptcy, which, frankly,
25 one cannot say today, the question is not what the picture

1 looks like today. The question is what the picture looked
2 like in October; October 15 specifically, when, at the
3 Court's strong suggestion, we convened for settlement
4 negotiation.

5 At that point, and if we harken back to
6 pre-election, the News Daily said GM has only enough cash
7 to make it, at most, to the end of this year. It couldn't
8 have been clearer. And that, but for an infusion, it will
9 have to declare bankruptcy. At that point there was no
10 certainty the government would infuse anything into them,
11 much less how much or much less enough to get them more
12 than a month or whatever.

13 We, as class counsel, had to make a call. And we
14 made the call at the time that we needed to get the best
15 settlement that we could, not hold out for something that
16 would be ephemeral under every indication we had there. We
17 sought to get everything he mentioned, and GM said they
18 would not do it. We would have -- the mediator told us
19 privately, and we believed him, emphatically, you cannot
20 get those things. If that is it, the mediation is over.
21 We had to believe that. We had to make a call under those
22 circumstances.

23 This -- and to look at the value now is wrong
24 because those certificates can be used for up to three
25 years. Well, a lot can happen in three years. The

1 picture, it can change within three years. It takes little
2 to get the certificate, relatively speaking. The
3 settlement has been very flexible in terms of proof of it.
4 The worst that happens is they elect not to use them or
5 not to transfer them over the internet or to somebody or
6 not to make a gift of them or whatever.

7 The National Association of Consumer Advocates, as
8 cited in Mr. Gibson's papers, were well aware of it. It is
9 cited in certain opinions. Their guidelines don't address
10 an imminent bankruptcy situation. Their guidelines address
11 the preferable situation, the one we would like, which is a
12 solvent Defendant knows if it won't agree to what we think
13 is reasonable, we are going to trial and may well get a
14 verdict. That is not our situation.

15 The deadline for filing our brief was in the class
16 settlement papers and in the notice. It was available
17 here. It was public record. We do not -- we received no
18 request from Mr. Gibson for a copy of that brief, which, as
19 I gave it today to him, I would have given him then. We do
20 not believe there should be a delay for him to get
21 something in. He is here, he can mention the specifics of
22 it at this point.

23 We had -- we have brought our papers, which are,
24 frankly, for the Court's view. There is work product in
25 that. We would do what Your Honor said about that, but

1 there is work product in it.

2 If I am here telling Your Honor that every hour we
3 said we worked in there, we got it in detail, we worked on
4 this case. And even if you were to shave it remarkably
5 based on the reduction we have voluntarily made here today,
6 it would still be reasonable. \$134 an hour blended rate
7 for work with this risk for that period of time is, we
8 think, under any stretch of the imagination, a very
9 reasonable rate to ask.

10 So with -- and there is -- there is a criticism
11 Mr. Gibson did not make here at the stand but he made it in
12 his papers, that we are trying rush this through. We want
13 -- we have been seeking assiduously to get final approval
14 for the settlement and all necessary parts of it before any
15 bankruptcy.

16 Your Honor knows we sought to get the earliest
17 deadlines we could consistent with the Court's schedule,
18 and for that reason to -- because if a bankruptcy were to
19 occur without that final approval, end of discussion and
20 value for the class.

21 For all of those reasons, and the reality of the
22 situation with which we, through no fault of our own, had
23 to work with, we believe the settlement is a reasonable one
24 and it should be approved, and that our request for costs,
25 which have not been contested, should be approved, and that

1 the voluntarily reduced request for a reasonable fee should
2 be approved.

3 we all know we are looking at June 1 as the much-
4 advertised deadline for GM to make its decision, and it
5 could come sooner.

6 THE COURT: All right. Anything further?

7 MR. GIBSON: May I respond, Your Honor?

8 THE COURT: One time, yes.

9 MR. GIBSON: Thank you, Judge.

10 MR. RODA: Your Honor, I am told I misspoke. The
11 date for the filing of our brief and petition was in Your
12 Honor's preliminary approval order, which, of course, was a
13 matter of public record, and has been.

14 THE COURT: Yes.

15 MR. GIBSON: Uh, Your Honor, as I sit here and
16 listen, it seems to me that Mr. Roda is speaking out of
17 both sides of his mouth. He says that this settlement must
18 be considered at the time it was made in October, before GM
19 got its infusion of cash; and that was a big risk, that
20 they weren't going to get the infusion of cash, but then he
21 turns and said but this Court should also consider things
22 can improve as far as using these coupons over the next
23 three years. And I find that completely inconsistent, and
24 I think if things have changed, perhaps the parties should
25 go back to the table -- GM has gotten its infusion of cash

1 -- and come up with some sort of settlement that gives some
2 type of benefit to Pennsylvania consumers.

3 With respect to -- I find it -- I don't know the
4 right word to use, and I don't want to use a word too
5 strong -- but it is surprising to me class counsel would
6 demonstrate to this Court that they spent 6,000 hours on
7 this case and hold up a stack of documents to this Court,
8 basically parading to the Court saying here, look, we did
9 it, then when I asked to have it marked into evidence, all
10 of a sudden objects to having it marked into evidence.

11 I find that troublesome, especially in light of
12 the fact they are asking this Court, and suggesting to this
13 Court, they are using a reduced rate, but how can this
14 Court tell -- I don't know if they are sending -- and I am
15 not -- I have no idea whether they are sending one
16 associate to depositions, or whether there is six
17 associates at depositions.

18 If there are six associates sitting in the same
19 deposition at \$135 an hour, that is more than one person
20 who could be handling the deposition. So I just don't
21 know. And I find it -- again, I don't want to use words
22 too strong -- but I find it peculiar class counsel would
23 parade that in front of the Court as justification for
24 their hours, then when asked to submit it into evidence,
25 now is trying to obstruct that.

1 Also, lastly, with regard to the fact that Mr.
2 Roda's response was filed with the Court, I filed with Mr.
3 Roda -- I initially sent, I copied Mr. Roda the objection,
4 and then when the period -- the last day of the period, not
5 only did I copy Mr. Roda, who I was only required to copy
6 under the settlement agreement, I also, as a courtesy, as
7 an attorney in this case, copied GM's local counsel, as
8 well as GM's counsel of record on the docket, and it is
9 surprising to me that someone who's been around so long as
10 Mr. Roda would not copy me.

11 He clearly knew I filed my intent, filed with the
12 Court, which I wasn't required to do, and served an
13 additional copy on him, that I wouldn't be served of a copy
14 of his motion for final approval and motion for fees. And,
15 again, I would renew my request that I have a reasonable
16 period of time to respond to that 30-some odd page brief.

17 Thank you, Judge.

18 THE COURT: Thank you.

19 MR. RODA: Just so the record it is clear, Your
20 Honor, and Mr. Lipps will attest to it, I worked on this
21 case, Miss Burkholder, sitting next to me, worked on this
22 case. There were never multiple people at depositions.

23 MR. GIBSON: I am not accusing you of that. I
24 just don't -- I am not accusing you of that. I said that
25 before I said that. But I was saying without the time

1 records, no one knows. There could have been -- I don't
2 know if there was one, two, no one knows. And I would
3 renew my request those would be entered into evidence as
4 well, Judge.

5 THE COURT: Thank you for your comments.

6 MR. GIBSON: Thank you.

7 THE COURT: Miss Spradlin.

8 MS. SPRADLIN: What I want to know and understand
9 is why he can get paid cash all these thousands and
10 thousands and thousands of dollars, when I only want \$230
11 in cash, what was taken from me illegally, that what's the
12 big deal.

13 It is just unbelievable. Give him coupons. Why
14 don't you accept coupons for your deal with him? You guys
15 can talk all nice and friendly and stuff out in the
16 hallway, but it comes down to the little person like me,
17 like every other Tom, Dick, and Harry on the street that
18 ain't making the income these gentlemen are making.

19 \$230 to these guys is nothing, but it is a lot to
20 me. And to give me a certificate to go buy another car
21 they deceived me on, made me pay more for, all these years
22 I've been paying for that car.

23 THE COURT: I understand.

24 MS. SPRADLIN: It is not right. It is just not
25 right.

1 THE COURT: I hear you.

2 MS. SPRADLIN: And I won't ever buy another GM,
3 period, for that reason.

4 THE COURT: All right.

5 I've lived with this case for nine years. I know
6 what work was done on it. I know the issues that are
7 involved, the difficulty of those issues. And there is no
8 certainty here that the verdict would be for the Plaintiff
9 in the amounts that everybody is suggesting are going to so
10 readily flow.

11 This case -- I've been a judge for 24 years; this
12 is the hardest-fought case I have experienced in that time.
13 And it has been the best-lawyered case I have experienced
14 from both sides. So I know what's involved. I know how
15 much work went into it. And I know the only lawyers I've
16 seen for the Plaintiff are Mr. Roda and Miss Burkholder.

17 Though I am totally and completely satisfied that
18 attorneys' fees requested here are extremely reasonable,
19 and certainly the reimbursement for costs is reasonable,
20 the issue of the adequacy of the settlement in terms of
21 certificates, of course certificates are not by any means
22 the ideal.

23 I am satisfied, however, that given all the
24 uncertainties of the litigation, all the uncertainties of
25 what is going on within the real world, that this is as

1 good as can be expected under the circumstances.

2 Accordingly, I will approve the settlement. And I
3 applaud Mr. Roda's reduction of his fee by one-half. The
4 rate of \$134 per hour is astounding, and it recognizes the
5 very real position that the Plaintiff needs to recognize,
6 that this litigation isn't about an attorneys' fee, it is
7 about the class. He is not asking for fees that would make
8 this a suit just for attorneys.

9 Under the circumstances, over nine hard-fought
10 years of intense work, this is extremely reasonable and I
11 will approve it.

12 Mr. Gibson, your request is denied.

13 MR. GIBSON: For the admission -- for submission
14 of the time records?

15 THE COURT: Yes. I am totally satisfied. As
16 having lived with this litigation for nine years, and all
17 the times we've been together, and knowing all the
18 discovery issues that went through --

19 MR. GIBSON: I just note my objection.

20 THE COURT: Given all the time, there is no need
21 for any further review by me of those records to know that
22 the fee request in this case is totally beyond reasonable,
23 to the extent it is unreasonable to Plaintiffs, and they do
24 it under the recognition. I accept what he says.

25 MR. GIBSON: Your Honor --

1 THE COURT: I'll finish.

2 The recognition that, under the circumstances, to
3 take anymore in view of the Plaintiffs being left with a
4 certificate, and we recognize, too, they do have the
5 ability to turn that into cash after a year.

6 So, with that, these proceedings are concluded.

7 MR. GIBSON: Your Honor, may I address the Court?

8 THE COURT: For what purpose?

9 MR. GIBSON: I would just like to note my
10 objection for the record --

11 THE COURT: And you may appeal.

12 MR. GIBSON: Yeah, I realize that.

13 And I also, I just wanted to clarify the record as
14 well.

15 When Your Honor said there is no need for further
16 review of those time records --

17 THE COURT: By me.

18 MR. GIBSON: Does that mean the Court has reviewed
19 them already?

20 THE COURT: No.

21 MR. GIBSON: So there is no need -- okay.

22 Thank you, Judge.

23 THE COURT: No, I am satisfied with the fee
24 request based upon what I understand has gone on in this
25 case for nine years, and the amount of work that has gone

1 on.

2 The order will be issued in due course, the formal
3 order.

4 (9:53 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

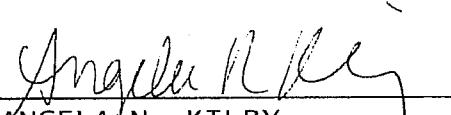
24

25

1 REPORTER'S CERTIFICATE
2

3 I HEREBY CERTIFY that I was present at the
4 hearing of the above-entitled matter and reported
5 stenographically the proceedings held and the testimony
6 produced; and I further certify that the foregoing is a
7 true and correct copy of my said stenographic notes.

8 In testimony whereof, I have hereunto subscribed
9 my hand this 29th day of April , 2009.

10
11
12
13 
14 ANGELA N. KILBY
15 official Court Reporter

16
17 ORDER
18

19 AND NOW, this day of
20 2009, this transcript is approved and ordered to be filed.

21
22
23 Louis J. Farina, Judge
24
25